

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR

WASHINGTON, D.C. 20006

September 21, 1999

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v.

ASSOCIATED ELECTRIC
COOPERATIVE, INC.

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Docket Nos. CENT 97-164-R
CENT 97-165-R

BEFORE: Jordan, Chairman; Marks, Riley, Verheggen, and Beatty, Commissioners

ORDER

BY THE COMMISSION:

Pending before the Commission is a joint motion filed by Associated Electric Cooperative, Inc. ("Associated Electric") and the Department of Labor's Mine Safety and Health Administration ("MSHA") to dismiss as moot the petition for discretionary review filed in this matter. The parties argue that the petition is moot because, on August 30, 1999, MSHA issued a notice vacating the citation and order at issue in the case. *Jt. Mot.* at 1. The parties explain that MSHA issued the notice because, in *Herman v. Associated Electric Cooperative, Inc.*, 172 F.3d 1078 (8th Cir. 1999), the United States Court of Appeals for the Eighth Circuit determined that the area which is the subject of the citation and order in question in this case is not a "mine" within the meaning of section 3(h)(i) of the Mine Act, 30 U.S.C. § 802(h)(i). *Id.* The parties further state that the Secretary does not intend to appeal the decision of the Eighth Circuit. *Id.* at 1-2. The Secretary and Associated Electric specify that each party will bear its own costs, fees, and expenses in this case before the Commission. *Id.* at 2.

Upon consideration of the joint motion by the Secretary and Associated Electric for voluntary dismissal, we grant the parties' motion. Accordingly, the Commission's direction for review in this matter is vacated and Associated Electric's appeal is dismissed.

Mary Lu Jordan, Chairman

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

Theodore F. Verheggen, Commissioner

Robert H. Beatty, Jr., Commissioner

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